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No. 762

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In the Supreme Court of the United States

October Term, 1957

GEORGIA POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

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OPINIONS BELOW

The opinion and orders of the Federal Power Commission (1 R. 93-120, 135-139)[1] are reported at 16 F.P.C. 52 and 1365. The opinions of the United States Court of Appeals for the Fourth Circuit are reported at 249 F.2d 755 and are set forth in Appendix A to the petition in No. 697, this Term.

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[1] The record here is the same as that filed in No. 697, this Term. The record consists of six volumes. Thus, 1 R. —— refers to the first volume.

JURISDICTION

The judgment of the Court of Appeals was entered on October 23, 1957. A petition for rehearing, timely filed, was denied on November 23, 1957. The petition for a writ of certiorari was filed on February 3, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Federal Power Commission, acting pursuant to Section 206(a) of the Federal Power Act, may reduce a contract rate when it finds that the rate is unjust and unreasonable on the basis of cost of service.

STATUTES INVOLVED

The pertinent provisions of the Federal Power Act are set forth at pages 17-19 of the petition.

STATEMENT

Petitioner, Georgia Power Company, intervened below in the review proceedings which challenged an order of the Federal Power Commission reducing the rates on a wholesale purchase of electric energy established in a contract between the South Carolina Generating Company, as seller, and the Georgia Power Company, as purchaser. The petition seeks review of that portion of the decision of the Court of Appeals which affirms the Commission's holding that the reasonableness of the contract rate should be determined by cost of service, not by the value of the service to the purchaser. The pertinent facts are set forth in

the Federal Power Commission's brief in opposition to the petition filed by the selling utility in *South Carolina Generating Company* v. *Federal Power Commission, et al.*, No. 697, this Term, to which we respectfully refer the Court.

ARGUMENT

This petition involves substantially the same issue as the first question in the petition filed in *South Carolina Generating Company* v. *Federal Power Commission, et al., supra*, pages 8-13. For the reasons stated at pages 7-10 of our brief in opposition to that petition, it is respectfully submitted that this petition should likewise be denied.

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